Wong Kim Fatt v Yong Kwet Yin

HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO 11-6-1995
ABDUL MALIK ISHAK J
8 AUGUST 1995

Civil Procedure *— Summary judgment — Loan — Rebutting presumption of moneylending — Whether affidavit evidence was sufficient — Whether necessary for competent officer from licensing authority to swear affidavit stating that appellant not a moneylender — Moneylenders Act 1951 s 3*

Moneylenders *— Loan interest-free to friend — Whether a moneylending transaction — Whether necessary for competent officer from licensing authority to swear affidavit stating that appellant not a moneylender — Moneylenders Act 1951 ss 3, 5*

Limitation *— Advance of money — Personal loan — Cheque for repayment of loan dishonoured — Whether limitation period runs from date of advance of money or date of dishonour of the cheque*

On 20 November 1993, the appellant filed a claim in the magistrates' court against the respondent for the return of RM20,000 which he had advanced to the respondent. The appellant alleged that the sum was given to the respondent as a personal loan, and that although the respondent had handed him a cheque dated 30 June 1988 as repayment of the loan, the cheque was dishonoured when the appellant presented it for payment on 20 July 1988. On the other hand, the respondent in his defence, argued that: (i) the appellant had entered into an agreement with him and one Foon Teck Lee to embark on a moneylending business in 1983, and that he was merely the appellant's agent who was responsible for scouting for borrowers on behalf of the appellant; (ii) the appellant had carried out a moneylending transaction without a licence, contrary to s 5 of the Moneylenders Act 1951 ('the Act'); and (iii) the cause of action was already time-barred under the Limitation Act 1953. The appellant, upon sight of the statement of defence, applied to the magistrates' court for summary judgment under O 26A of the Subordinate Courts Rules 1980. The appellant repeatedly stated in his affidavits that he had given a personal loan of RM20,000 to the respondent at the respondent's request and denied knowledge of the moneylending business as alleged by the respondent. The appellant also deposed that all throughout, the respondent had not adverted to the transaction as a moneylending scheme until the appellant filed his claim The respondent in his affidavits repeated his allegations in his statement of defence. However, the appellant's deposition was never replied to by the respondent in his affidavits and no affidavit in support was filed by Foon Teck Lee. The magistrate dismissed the appellant's application for summary judgment. The appellant appealed.

Held, allowing the appeal with costs:

(1) From the affidavit evidence, it was clear that the appellant did not advertised or held himself out in any way as as a moneylender as defined by s 2 of the Act. The allegation of moneylending was merely a bare allegation which was unsupported by any concrete evidence. A denial of moneylending by way of affidavit evidence would be sufficient to rebut the presumption of being a moneylender under s 3 of the Act. It is not necessary for the appellant to obtain the services of a competent officer from the licensing authority to swear an affidavit to say that the appellant was not a moneylender (see pp 53D–F and 54H); *Teng Ah Seah v Teh Choo Pheng* 2 MC 253, *Litchfield v Dreyfus* [1906] 1 KB 584 and *Larut Matang Supermarket Sdn Bhd v Liew Fook Yung* [1995] 1 MLJ 375 followed.

(2) The appellant gave only two personal loans to the respondent, and it could not be argued that these two isolated personal loan transactions could be construed as evidence of 'system and continuity' of a moneylending business (see p 54D); *Newton v Pyke* (1908) 25 TLR 127 and *Baju Ria v Liau Kim Lian* [1965] 1 MLJ 128 distinguised.

(3) The respondent was not an agent of the appellant in the purported moneylending business, but a recipient of the RM20,000 personal loan. However, had Foon Teck Lee filed an affidavit in support of the respondent, the allegation that the respondent was acting as an agent of the appellant in the moneylending could possibly be corroborated (see pp 53F and 55F).

(4) It is now crystal clear that the limitation period runs from the date when the cause of action arose and for purposes of computation the day on which the cause of action arose should be excluded. In this case, the time runs from 20 July 1988 when the cheque was dishonoured and that being the case the appellant was well within time and the limitation axe had yet to fall to the detriment of the appellant (see p 56E–F); *Coburn v Colledge* [1897] 1 QB 702 and *Marren v Dawson Bentley & Co Ltd* [1961] 2 QB 135 followed.

[Bahasa Malaysia summary

Pada 20 November 1993, perayu telah memfailkan suatu tuntutan di mahkamah majistret terhadap penentang untuk pembayaran balik RM20,000 yang telah diberikan kepada penentang. Perayu menyatakan bahawa jumlah wang tersebut telah diberikan kepada penentang sebagai suatu pinjaman persendirian, dan walaupun penentang telah menyerahkan sekeping cek kepadanya sebagai pembayaran pinjaman tersebut, perayu mendapati bahawa cek itu adalah tak laku apabila perayu mengemukakannya untuk bayaran pada 20 Julai 1988. Sebaliknya, penentang pula berhujah dalam pembelaannya bahawa: (i) perayu telah mengikat suatu perjanjian dengannya dan seorang yang bernama Foon Teck Lee untuk

A memulakan suatu perniagaan memberipinjam wang dalam 1983, dan dia hanya merupakan ejen perayu yang bertanggungjawab untuk mencari peminjam bagi pihak perayu; (ii) perayu telah menjalankan urusniaga pinjaman wang tanpa lesen, bercanggahan dengan s 5 Akta Pemberipinjam Wang 1951 ('Akta tersebut'); dan (c) kausa tindakan telahpun dihalang oleh had masa di bawah Akta Had Masa 1953. Selepas penentang membaca pernyataan pembelaan tersebut, penentang pun memohon kepada mahkamah majistret untuk penghakiman terus di bawah A 26A Kaedah-Kaedah Mahkamah Rendah 1980. Perayu berkata berulang-kali dalam afidavitnya bahawa dia telah memberikan suatu pinjaman persendirian sejumlah RM20,000 kepada penentang atas permintaan penentang, dan dia menafikan pengetahuan tentang perniagaan memberipinjam wang seperti yang dikatakan oleh penentang. Penentang juga mendepos bahawa pada semua masa, perayu tidak pernah merujuk kepada urusniaga itu sebagai suatu skim memberipinjam wang, sehinggalah perayu memfailkan tuntutannya. Penentang, dalam afidavitnya, mengulangi pengataannya dalam pernyataan pembelaan. Walau bagaimanapun, penentang tidak membalas deposisi perayu dalam afidavitnya, dan tidak ada afidavit sokongan yang telah difailkan oleh Foon Teck Lee. Majistret tersebut telah menolak permohonan perayu untuk penghakiman terus. Perayu merayu.

Diputuskan, membenarkan rayuan dengan kos:

(1) Daripada keterangan afidavit, adalah jelas bahawa perayu tidak mengiklan atau berlagak melaui sebarang cara sebagai seorang pemberipinjam wang seperti yang ditakrifkan oleh s 2 Akta tersebut. Pengataan memberpinjam wang tersebut merupakan suatu pengataan yang tidak berasas, yang tidak disokong oleh sebarang keterangan yang kukuh. Penafian memberipinjam wang secara keterangan afidavit adalah cukup untuk mematahkan anggapan pemberipinjam wang di bawah s 3 Akta tersebut. Adalah tidak perlu supaya perayu mendapatkan perkhidmatan seorang pegawai yang kompeten dari pihak berkuasa pelesenan untuk mengikrarkan satu afidavit menyatakan bahawa perayu bukanlah seorang pemberipinjam (lihat ms 563–F dan 54H); *Teng Ah Seah v Teh Choo Pheng* 2 MC 253, *Litchfield v Dreyfus* [1906] 1 KB 584 dan *Larut Matang Supermarket Sdn Bhd v Liew Fook Yung* [1995] 1 MLJ 375 diikut.

(2) Perayu hanya memberikan dua pinjaman persendirian kepada penentang, dan adalah tidak boleh dihujahkan bahawa dua urusniaga pinjaman persendirian yang berasingan ini boleh ditafsirkan sebagai keterangan 'sistem dan kesinambungan' suatu perniagaan memberipinjam (lihat ms 54D); *Newton v Pyke* (1908) 25 TLR 127 dan *Baju Ria v Liau Kim Lian* [1965] 1 MLJ 128 dibeza.

(3) Penentang bukan merupakan seorang ejen perayu dalam perniagaan memberipinjam wang yang dikatakan, tetapi seorang penerima pinjaman persendirian sejumlah RM20,000. Walau

bagaimanapun, jika Foon Teck Lee telah memfailkan satu afidavit untuk menyokong penentang, pengataan bahawa penentang telah bertindak sebagai seorang ejen perayu dalam memberipinjam wang mungkin dapat disokong (lihat ms 53F dan 55F).

(4) Adalah jelas sekarang bahawa had masa bermula daripada tarikh apabila kausa tindakan timbul, dan untuk tujuan kiraan, hari di mana kausa tindakan timbul tidak patut dikira. Dalam kes ini, had masa bermula daripada 20 Julai 1988 apabila cek itu tidak dilayan, dan oleh sebab ini, perayu adalah masih dalam had masa, dan halangan had masa tidak menjejaskan kedudukan perayu (lihat ms 56E–F); *Coburn v Colledge* [1897] 1 QB 702 dan *Marren v Dawson Bentley & Co Ltd* [1961] 2 QB 135 diikut.]

Notes

For cases on summary judgment, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3197–3520.

For cases on moneylenders, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 385–534.

For cases on limitation, see 9 *Mallal's Digest* (4th Ed,1995 Reissue) paras 1732–1960.

Cases referred to

Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru [1995] 2 MLJ 287

Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd [1986] 1 MLJ 382

Baju Ria v Liau Kim Lian [1965] 1 MLJ 128

Coburn v Colledge [1897] 1 QB 702

Eng Mee Yong & Ors v Letchumanan [1979] 2 MLJ 212

Koh Sek Lim v Marriott [1941] MLJ 214

Larut Matang Supermarket Sdn Bhd v Liew Fook Yung [1995] 1 MLJ 375

Lee Lee Cheng v Seow Peng Kwang [1960] MLJ 1

Litchfield v Dreyfus [1906] 1 KB 584

Manchester Corporation v Connolly [1970] 1 All ER 961

Marren v Dawson Bentley & Co Ltd [1961] 2 QB 135

Newton v Pyke (1908) 25 TLR 127

Ronnex Properties Ltd v John Laing Construction Ltd & Ors [1983] 1 QB 398

Teng Ah Seah v Teh Choo Pheng 2 MC 253

Yeep Mooi v Chu Chin Chua & Ors [1981] 1 MLJ 14

Legislation referred to

Moneylenders Act 1951 ss 2, 3, 5

Limitation Act 1953 s 6

Subordinate Courts Rules 1980 O 26A

Tho Kam Chew (*Gulam & Wong*) for the appellant.

Yap Siong Cheng (*Arthur Lee & Co*) for the respondent.

Abdul Malik Ishak J: The appellant, an advocate and solicitor with Messrs Gulam & Wong, filed his claim against the respondent in the magistrates' court, Johor Bahru vide Summons Case No 72–4417 of 1993, and in his statement of claim, the appellant sought for the return of his RM20,000 which was advanced to the respondent as a personal loan and which was payable, as agreed by the respondent, on 30 June 1988. The respondent gave a cheque vide OCBC No 201486 dated 30 June 1988 to the appellant, which was dishonoured when the appellant presented for payment at the Malayan Banking Bhd, Johor Bahru on 20 July 1988. The appellant sought for the repayment of that personal loan on several occasions but to no avail and finally, on 26 January 1993, the appellant sent a notice of demand through Messrs Gulam & Wong. This was also ignored by the respondent.

The defence was that in 1983, both parties together with one Foon Teck Lee decided to embark on a moneylending business. It is agreed that the appellant acted as the financier whilst the respondent was responsible for scouting for the borrowers. It was alleged that towards this end, the appellant had issued five cheques in the following amounts in the respondent's name:

(1) RM15,000 on 15 January 1985;
(2) RM20,000 on 8 March 1985;
(3) RM10,000 on 26 March 1985;
(4) RM10,000 on 3 May 1985; and
(5) RM5,000 on May 1985.

These sums were loaned to the respondent's younger brother by the respondent himself at an interest rate of 4% per month. The respondent's younger brother was said to be Yong Kok Chai. It was part and parcel of the defence that the appellant would obtain 75% of the monthly interest leviable on those loans to Yong Kok Chai whilst the respondent stood to gain 25%. Thus, each time Yong Kok Chai repaid the loan, the respondent remitted 75% of the monthly interest to the appellant until November 1985 when Yong Kok Chai refused to repay those loans. It was the respondent's case that Yong Kok Chai had repaid a sum of RM15,000 to the appellant and this sum was transmitted to the appellant by the respondent vide OCBC cheque No 022545 dated 17 April 1985. It was the defence case that the appellant demanded the respondent to issue three cheques in the sums of RM20,000, RM15,000 and RM10,000 in the appellant's favour as security for the loans advanced to Yong Kok Chai. The respondent complied and issued cheques dated 10 June 1985, 30 July 1985 and 2 September 1985 for those amounts. Replacement cheques for the same amounts were issued by the respondent on the request of the appellant and these replacement cheques were dated 16, 26 and 30 December 1985. On three other occasions, the respondent issued replacement cheques for those sums as demanded by the appellant. Basically, the defence was a denial of the repayment of the personal loan by 30 June 1988. It was alleged that the respondent acted, at all material times, as the appellant's agent in the moneylending transaction. It was also alleged that the appellant as a moneylender had carried out a moneylending

business without a licence. Finally, the defence relied on the Limitation Act 1953 and alleged that the cause of action was time-barred. A

Upon sight of the statement of defence, the appellant wasted no time and applied to the Magistrate's Court, Johor Bahru, for summary judgment against the respondent under O 26A of the Subordinate Courts Rules 1980 ('the SCR'). In his affidavit in support of the application affirmed on 29 January 1994, the appellant deposed that on the request of the respondent, a sum of RM20,000 was advanced by way of a personal loan to the respondent by the appellant. It was deposed that the respondent promised to repay the personal loan by 30 June 1988, and towards this end, the respondent gave the appellant by way of an OCBC cheque No 201486 dated 30 June 1988 for the amount. But on 20 July 1988, when the appellant presented the cheque for payment, it was dishonoured. On three occasions, the appellant wrote to the respondent for the return of RM20,000 but nothing came out of it. These letters were dated 30 December 1989, 9 April 1992 and 26 January 1993. The appellant deposed that the respondent neglected, refused to pay and settle the personal loan and the appellant believed that there was no defence and sought for summary judgment forthwith. B C D

The respondent affirmed an affidavit-in-reply on 16 May 1994 wherein he denied that he requested or received the personal loan of RM20,000 from the appellant. In essence, the respondent repeated the same set of facts and circumstances as alluded to by him in his statement of defence and, consequently, there is no need for me to repeat them here. The appellant responded by filing an affidavit-in-reply affirmed on 28 May 1994, and again the appellant repeated that he gave a personal loan of RM20,000 to the respondent on the respondent's request. The appellant denied knowledge of the relationship between Foon Teck Lee and the respondent and the moneylending business as alleged by the respondent. The appellant reiterated that he advanced the money as a personal loan on the request of the respondent and that he had no knowledge that the respondent had handed that money to the respondent 's brother as a loan. Of pertinence, the appellant deposed to a startling fact to the effect that all throughout the respondent did not advert to the personal loan transaction as a moneylending scheme and it seemed that the respondent adopted this stand when the appellant filed his claim in the Magistrates' Court, Johor Bahru. This point was never replied to by the respondent in his further affidavit-in-reply affirmed on 13 June 1994. Now, reverting back to the appellant's affidavit-in-reply affirmed on 28 May 1994, the appellant denied all the allegations put forth by the respondent, and deposed that the RM15,000 which was allegedly handed to the appellant was not meant for the appellant but rather for the repayment of the personal loan advanced by KF Wong Enterprise Sdn Bhd to the respondent. The appellant, apart from repeating that the RM20,000 was a personal loan advanced by him to the respondent, introduced two salient facts, namely: E F G H I

(1) that the appellant gave a personal loan to the respondent in the sum of RM10,000 which the appellant claimed in the Magistrates' Court, Johor Bahru vide Summons No 72–4418 of 1993; and

(2) that KF Wong Enterprise Sdn Bhd ('the company'), of which the appellant was the legal adviser and a shareholder, gave a personal loan of RM15,000 to the respondent and that the company filed a claim against the respondent in the Magistrates' Court, Johor Bahru vide Summons No 72–4419 of 1993.

The appellant further deposed that, at all material times, the respondent issued three cheques in favour of the appellant, and these three cheques were said to be for the following transactions:

(1) OCBC cheque No 040669 dated 10 June 1985 for RM20,000 being payment for the personal loan advanced by the appellant to the respondent;

(2) OCBC cheque No 056501 dated 2 September 1985 for RM10,000 being payment for the personal loan advanced to the respondent by the appellant; and

(3) OCBC cheque No 040682 dated 30 July 1985 for RM15,000 being payment for the personal loan advanced to the respondent by the company.

It was deposed that the appellant and the company were unable to cash those cheques as the respondent requested that those cheques should not be cashed and wanted time to pay the personal loans. The appellant and the company acceded to the respondent's request. On the expiry of those cheques, replacement cheques as adverted to in the early part of this judgment were issued on four other occasions, and finally when cheques dated 30 June 1988, 27 June 1988 and 20 June 1988 were presented for payments, they were dishonoured. The appellant categorically denied that he carried out a moneylending transaction and that those transactions were in the nature of personal loans. It was the appellant's case that the cause of action accrued on 20 July 1988, when the bank dishonoured OCBC cheque No 201486 dated 30 June 1988. The appellant finally deposed that it was his belief that the respondent had no defence to his claim and that the respondent's statement of defence was filed purely to delay the proceedings. The appellant reiterated that the respondent did not deny that those transactions were in the nature of personal loans when the appellant issued a notice dated 26 January 1993. For clarity that notice is reproduced hereinunder:

Gulam & Wong
Peguambela & Peguamcara
Advocates & Solicitors
Notary Public
Commissioner For Oaths
Suite 1103–5, 11th Floor
Johor Tower
(Tropical Inn)
15, Jalan Gereja
80100 Johor Bahru
Tel: 07-246851/2; 245963

Fax: 07-246854
Telex: MA 60726 LONACO

Our Ref: WKF/st/14/93

26 January 1993

Mr Yong Kwet Yin AR Registered
57, Jalan Jeram
Taman Tasek
80350 Johor Bahru

Dear Sir

Re: Your three dishonoured cheques

I refer to the above matter and my letter of 9 April 1992 which had been received by you. I regret to state that you have failed to make payment or response. I must remind you for the last time that your following three OCBC cheques were dishonoured:

(1) No 201484 dated 20 June 1988 in my favour for RM10,000;

(2) No 201486 dated 30 June 1988 in my favour for RM20,000; and

(3) No 201485 dated 27 June 1988 in favour of my company KF Wong Enterprise Sdn Bhd for RM15,000.

TAKE NOTICE that if you fail to settle fully the above sums or make satisfactory arrangement as to their payment within one month from date of this letter, I will have no alternative except to institute legal proceedings against you for their recovery with interest and costs without further reference to you.

A copy of this letter is being sent to you by ordinary mail.

Yours faithfully
—Sgd—
(Wong Kim Fatt)

cc: Mr Yong Kwet Yin
57, Jalan Jeram
Taman Tasek
80350 Johor Bahru.

The respondent's affidavit-in-reply affirmed on 13 June 1994 bore similar streaks as that of his previous affidavit-in-reply, and there is no need to regurgitate them here. Suffice for me to state that three main issues unfolded from the various affidavits of both parties, and I propose to deal with them in this order:

(1) The question of moneylending business purportedly carried out by the appellant without a licence.

(2) Whether the respondent acted at all material times as the appellant's agent in the moneylending business?

(3) Whether the cause of action was time-barred?

The first two issues

Mr Yap Siong Cheng, learned counsel acting for the respondent, argued systematically that the appellant gave a series of loans to the respondent

A and charged interests therein. These loans were said to be in the nature of moneylending and without the necessary licence, it was argued that the appellant had run foul of s 5 of the Moneylenders Act 1951. The appellant through Mr Tho Kam Chew, ably argued that those transactions were personal loans simpliciter, and did not and cannot amount to a money lending transaction. Who is a moneylender in law? Section 2 of the B Moneylenders Act 1951 defines moneylender to include:

> ... every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money C and whether or not that person carries on the business as a principal or as an agent.

From the affidavit evidence, it is abundantly clear that the appellant did not carry himself out or advertised or announced himself or held himself out to the whole world at large as a moneylender (*Teng Ah Seah v* D *Teh Choo Pheng* 2 MC 253). If it were true that the appellant entered into a pact with the respondent and one Foon Teck Lee to set up the moneylending business, why was it, one may ask, that there was not a simple affidavit filed by Foon Teck Lee to assert this important aspect to the respondent's case. In fact, the whole substratum of the respondent's E case hinged on Foon Teck Lee, and without his affidavit, the allegation by the respondent that the appellant dabbled in moneylending business must surely collapse like the Highland Tower Condominium in Kuala Lumpur, so to speak. Incidentally, had Foon Teck Lee filed an affidavit in support of the respondent, the allegation by the respondent that he acted as an agent of the appellant in that moneylending scheme could possibly be F corroborated. As it is now, we only have a bare allegation by the respondent unsupported by any concrete evidence. It is pertinent to point out that the appellant in his statement of claim did not advert to himself lending his money to the respondent with interest but rather, in a correct choice of words, he described the transaction as:

G

> Plaintif telah di atas permintaan defendan memberi pinjaman wang persendirian (selepas dari ini dirujuk sebagai 'pinjaman tersebut') sebanyak RM20,000 kepada defendan.

But even if, and there is no evidence here except the allegation of the respondent unsupported by Foon Teck Lee, the appellant lent his money H with interest to the respondent, that cannot entitle this court to label him as carrying on the business of moneylending. I am fortified in my view by passages appearing in the judgment of Farwell J in *Litchfield v Dreyfus* [1906] 1 KB 584, especially at p 589, where his Lordship said:

> I But not every man who lends money at interest carries on the business of moneylending. Speaking generally, a man who carries on a moneylending business is one who is ready and willing to lend to all and sundry, provided that they are from his point of view eligible. I do not of course mean that a moneylender can evade the Act by limiting his clientele to those whom he chooses to designate as 'friends' or otherwise: it is a question of fact in each case.

See also *Koh Sek Lim v Marriott* [1941] MLJ 214 and *Yeep Mooi v Chu Chin Chua & Ors* [1981] 1 MLJ 14.

It was argued that there were previous transactions where money passed from the appellant to the respondent, and on this point, it was sought to argue that there was a semblance of system and continuity about these transactions. But as can be seen from the recital of the facts garnered from the affidavit evidence, it was the appellant's case that, first, he gave a personal loan of RM20,000 to the respondent and this formed the subject matter of the present case. Secondly, he gave a personal loan of RM10,000 to the respondent and this formed the basis for Summons No 72–4418 of 1993 that was filed in the Magistrates' Court, Johor Bahru. Thirdly, KF Wong Enterprise Sdn Bhd gave a personal loan to the respondent in the sum of RM15,000 and this constituted Summons No 72–4419 of 1993 that was filed in the Magistrates' Court, Johor Bahru. The appellant gave only two personal loans to the respondent and surely it cannot be argued that these two isolated personal loan transactions could be construed as evidence of 'system and continuity' as envisaged by Walton J in *Newton v Pyke* (1908) 25 TLR 127, or in the words of Thomson CJ (as he then was) in *Baju Ria v Liau Kim Lian* [1965] 1 MLJ 128, that the words 'carrying on' involved 'some sort of course of continuing conduct'. It is a sad observation to make that the two affidavits filed by the respondent in response to that of the appellant were quite lengthy, but they are of marginal relevance. The adage that '... the most skilful counsel cannot make bricks without any straw' (*Manchester Corporation v Connolly* [1970] 1 All ER 961) rings true in this case.

The appellant categorically denied that he was a moneylender. A denial of this nature by way of affidavit evidence is sufficient to rebut any allegation of moneylending. Had this case gone on for trial, the appellant would still deny his involvement in moneylending, and no amount of cross-examination would produce an opposite view. As an advocate and solicitor, the appellant would surely know what to say in a court of law. Lending money on a personal basis without charging interest as was done by the appellant and as reflected in the statement of claim cannot in law amount to a moneylending transaction. A denial of moneylending by way of affidavit evidence would be sufficient to rebut the presumption of being a moneylender under s 3 of the Moneylenders Act 1951. If I may add it is not necessary for the appellant to obtain the services of a competent officer from the licensing authority to swear an affidavit to say that the appellant was not a moneylender. These views of mine are amply fortified by the case of *Larut Matang Supermarket Sdn Bhd v Liew Fook Yung* [1995] 1 MLJ 375 especially at pp 382 and 383, where it was stated that:

> The learned counsel for the defendant took advantage of this provision and argued that the plaintiff should have called a competent officer from the licensing authority to establish that the plaintiff was not a moneylender. With respect, the plaintiff need not take this course of action. It would be sufficient, as was done here, when Ramakrishnan gave evidence to the effect that the plaintiff was not a moneylender and submitted himself to cross-examination on this point (*Esmail Sahib v Noordin* [1951] MLJ 98 and *Lee Tian Hua v Chan Moi Hiong* [1988] 3 MLJ 406).

Though the case of *Larut Matang Supermarket Sdn Bhd v Liew Fook Yung* was conducted after a full fledged trial, yet the observations there are germane and applicable to the present appeal.

It is my judgment that the appellant gave a personal loan of RM20,000 to the respondent on the respondent's request. The transactions in regard to RM10,000 and RM15,000 were raised to cloud the whole issue and nothing else. A simple personal loan cannot be construed under the law to be a moneylending transaction. As Farwell J said in *Litchfield v Dreyfus* [1906] 1 KB 584, particularly at p 590:

> The Act was intended to apply only to persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of another business or to a few old friends by way of friendship. This particular Act was supposed to be required to save the foolish from the extortion of a certain class of the community who are called moneylenders as an offensive term. Moneylending is a perfectly respectable form of business. Nobody says that bankers are rascals because they lend money.

To recapitulate, I am satisfied and it is my judgment that the two other transactions, apart from the one under consideration, seen separately or cumulatively, were entirely without system or continuity. It is also my judgment that the appellant never advertised or held himself out in any way as carrying on a moneylending transaction. Indeed, in the absence of the affidavit of Foon Teck Lee, it is my judgment that the appellant was not carrying on a moneylending business. I am satisfied and it is also my judgment that the appellant was not a moneylender within the meaning of the Moneylenders Act 1951. Finally, it is also my judgment that the respondent was not an agent of the appellant in the purported moneylending business. In fact, the respondent's role was as a recipient of the RM20,000 personal loan from the appellant. I am aware of what Lord Diplock said in regard to affidavit evidence in the case of *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212 at p 217 to the effect that:

> Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be.

It is my judgment, on the facts as seen from the affidavits of both parties, if there had been a trial the result would have been the same.

The third issue

It is obvious that the main object of the statute of limitation is to discourage a sleeping plaintiff to wake up and enforce his right. Where that right has been extinguished, Stephenson LJ in *Ronnex Properties Ltd v John Laing Construction Ltd & Ors* [1983] 1 QB 398 rightly pointed out that:

> There are many cases in which the expiration of the limitation period makes it a waste of time and money to let a plaintiff go on with his action. But in

those cases it may be impossible to say that he has no reasonable cause of action. The right course is therefore for a defendant to apply to strike out the plaintiff's claim as frivolous, vexatious and an abuse of the process of the court.

Unfortunately, the respondent here did not apply to strike out the appellant's claim as 'frivolous, vexatious and an abuse of the process of the Court' but instead, filed his statement of defence and pleaded the Limitation Act 1953 — a course of action that was perfectly within the contemplation of *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1, and within the ambit of O 18 r 8 of the Rules of the High Court 1980.

Mr Yap Siong Cheng argued that RM20,000 was advanced to the respondent on 8 March 1985, and the last date for filing the claim would be on 7 March 1991, after a span of six years (see s 6 of the Limitation Act 1953). It was argued that since the appellant filed his claim on 20 November 1993, he was out of time and statute-barred from instituting his claim.

Mr Tho Kam Chew argued that the cause of action accrued when the cheque for the return of RM20,000 was dishonoured on 20 July 1988 and, consequently, when the claim was filed on 20 November 1993, the appellant was well within time.

It is now crystal clear that the period of limitation runs from the date when the cause of action arose (*Coburn v Colledge* [1897] 1 QB 702), and for purposes of computation the day on which the cause of action arose should be excluded (*Marren v Dawson Bentley & Co Ltd* [1961] 2 QB 135).

Paragraph 5 of the appellant's affidavit affirmed on 29 January 1994 specifically referred to the respondent's OCBC cheque No 201486 dated 30 June 1988, which was dishonoured on presentation on 20 July 1988 (see exhs 'WKF 1' and 'WKF 2'). The respondent in his affidavit-in-reply affirmed on 16 May 1994 did not touch on this point at all, and he must therefore be held to agree that his cheque was dishonoured on presentation on 20 July 1988 (*Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd* [1986] 1 MLJ 382 as applied in *Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287).

In my judgment, time runs in this case on 20 July 1988, and that being the case, the appellant was well within time and the limitation axe has yet to fall to the detriment of the appellant.

For the reasons adumbrated above, I allowed the appeal with costs.

Appeal allowed with costs.

Reported by Kevin Ooi